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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 1252 of 2006
Date of decision: 19.12.2007

Ajay Kumar **...Appellant**

Versus

Smt. Somwati Aggarwal **...Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Ms. Manisha Gandhi, Advocate for the appellant

Mr. V.K. Jain, Senior Advocate with
Mr. Aman Priye Jain, Advocate for the respondent.

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RAJESH BINDAL, J.

The defendant is in second appeal before this Court against the concurrent findings of fact by both the Courts below whereby suit for ejectment and recovery on account of rent, compensation for use and occupation, house tax etc. has been decreed against him.

The respondent/plaintiff filed a suit for ejectment of the appellant/defendant from shop No. 11 and shed forming part of property No. 126-B situated at Staff Road, Ambala Cantt and for recovery of Rs. 3,030/- on account of rent, compensation for use and occupation, house tax etc. The tenancy was originally created vide rent deed dated September 12, 1985 executed between the parties whereby the shop was rented out to the appellant/defendant on a monthly rent of Rs. 500/- from August 15, 1985 for a period of 11 months. Besides this local taxes were payable by the tenant. The tenant was debarred from making any addition or alteration in the tenanted premises. Thereafter, in the year 1988 the land abutting the shop was given on rent to the appellant/tenant at a monthly rent of Rs. 350/- per month on which a temporary shed was erected by him with permission of the landlord. The rent was increased from time to time. However, the respondent/landlord issued a notice to the appellant/tenant under Section 106 of the Transfer of Property Act, 1882 (for short “the Act”) on July 27,

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1994 for delivery of vacant possession of the property in dispute. When the possession was not delivered, the suit was filed.

It is the case of the landlord that initially there were two tenancies, namely, one for the shop and other for the open land. However, later on same merged into one and since long a composite receipt for the entire premises was being issued to the appellant/tenant to which no objection was raised at any time. It is even admitted by the appellant/tenant in the written statement filed by him that initially the rent was Rs. 915/- per month, which was revised from time to time and at the time of filing of written statement, the appellant/tenant was paying rent @ Rs. 1200/- per month for the open land underneath the shed and the shop. Learned trial Court on appreciation of evidence found that notice issued to the appellant/tenant under Section 106 of the Act was duly served and tenancy was terminated. The agreement signed between the parties showed that rent was payable monthly and not from year to year and accordingly the service of 15 days notice for termination of tenancy was a valid notice. Even before the lower Appellate court, the order passed by the learned trial Court was upheld.

I have heard learned counsel for the parties and with their assistance perused the paper book.

Learned counsel for the appellant has argued that infact there were two separate tenancies, one for the shop for which written rent note was entered into in the year 1985 and another for the open land, which was given on rent in the year 1988 for which no written agreement was signed and accordingly composite notice issued for termination of two different tenancies was not valid in the eyes of law. Even if there is a single tenancy, for the open land taken by the appellant on rent in the year 1988 in which he raised a shed, the terms of the written rent note of 1985 for that could not be relied upon as there were no written contract for the tenancy entered into in 1988. Further she argued that admittedly the tenancy was for the manufacturing purpose and 15 days notice issued for termination of the tenancy was not valid as a minimum period of six months was required to be given. She further submitted that judgment of this court in **M/s Modern**

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Construction Company Vs. Lt. Col. R.K.Sapra, 1990 Haryana Rent Reporter 425 relied upon by the Courts below is distinguishable on the facts. On the other hand, learned Senior Counsel appearing for the respondent submitted that as far as the question of there being two separate tenancies or single tenancy is concerned, it is admitted case of the appellant in the written statement that composite rent of Rs. 1,200/- per month was being paid for the entire premises, namely, shop and the open area rented out to the appellant. A single receipt was being issued for which no objection was ever raised. On the issue of 15 days notice for termination of tenancy, it was submitted that period of six months is required to be given in case there is no written contract. However, in the present case admittedly, the tenancy was on month to month basis and once there was written contract to the contrary, even as per Section 106 of the Act, the notice for six months was not required to be given. He has relied upon **Shri Janki Devi Bhagat Trust, Agra Vs. Ram Swarup Jain (dead) by LRs. (1995)5 Supreme Court Cases 314**.

Having heard learned counsel for the parties, I do not find any merit in the contention raised by learned counsel for the appellant.

The argument of the learned counsel for the appellant to the effect that there were two separate tenancies for the shop as well as for the open land has no legs to stand in the wake of admission made by the appellant/tenant in the written statement filed before the trial Court, wherein it was stated as under:-

> "The rent previously was Rs. 915/- P.M. and has been raised from time to time and defendant is a tenant on the open land underneath the shed and the shop, at a monthly rent of Rs. 1200/-"

Further even in the written rent note signed between the parties at the time of letting out of the shop, it was mentioned that open land abutting the shop cannot be used by the tenant without the permission of the landlord and in the present case, admitted case of the parties is that same was permitted to be used by the respondent/landlord on further payment of rent. This also, in my opinion, would mean that it is in terms of the agreement entered into

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between the parties that the open land was permitted to be used to the appellant/tenant and accordingly the terms and conditions which were agreed upon between the parties while signing rent note in 1985 would govern the tenancy. Further it is not denied by the counsel for the appellant that single receipt was being issued for the entire premises rented out to him by the landlord and no objection whatsoever was raised at any time even no claim is sought to be made that the rent was being paid separately.

The judgment of this Court in **M/s Modern Construction Company's** case (supra) is quite explicit on this issue as in that case also there were two different tenancies created under two different deeds on different dates, however, this Court opined that once it is found that a single receipt was being issued for payment of rent for both the tenancies, the identity of two different tenancies disappeared and the same merged into one single tenancy.

As far as on the issue of notice being bad on account of same being in violation of provisions of Section 106 of the Act is concerned, once it is found that parties were governed by 1985 agreement, which provided for monthly tenancy, even as per the provisions of Section 106 of the Act where there is an existing contract with conditions to the contrary, the provisions of Section 106 of the Act would not be applicable. In **Shri Janki Devi Bhagat Trust's** case (supra) Hon'ble the Supreme Court while considering the provisions of Section 106 of the Act where there was an agreement to the contrary and lease was for manufacturing purpose opined as under:-

> "Section 106 provides, inter alia, that in the absence of a contract between the parties, a lease of immovable property for manufacturing purposes shall be deemed to be a lease from year to year terminable by six months' notice. In the present case there is a clear finding to the effect that the lease in question was not from year to year or for a period exceeding one year. Therefore, even though the lease may be for a manufacturing purpose, since the lease in question was not from year to year, six months' notice was not required. A manufacturing lease

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> which is not from year to year does not require six months' notice of termination. It will fall in the second half of section 106, requiring fifteen days' notice of termination. A lease from month to month or a lease other than a lease from year to year is terminable by fifteen days' notice. Hence the notice in the present case is a valid notice to quit. The High Court, having come to the conclusion that the lease was not for a period exceeding one year, and was not a lease from year to year erred in holding that six months' notice to quit was required. Such a notice is required, provided there is no contract to the contrary, only when a manufacturing lease is, or is deemed to be, from year to year. This not being the case, the lease is terminable by fifteen days' notice even if the lease is a manufacturing lease."

For the reasons stated above, the findings recorded by the Courts below cannot be held to be perverse in any manner.

No substantial question of law arises in the present appeal and the same is, accordingly, dismissed.

December 19, 2007 **(Rajesh Bindal)**
Pka **Judge**